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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/195,005	11/18/1998	BERND WILLING	MO-4861-HE-1	3843
7590	05/26/2004		EXAMINER	
PATENT DEPARTMENT BAYER CORPORATION 100 BAYER ROAD PITTSBURGH, PA 152059741			VALENZA, JOSEPH E	
			ART UNIT	PAPER NUMBER
			3651	

DATE MAILED: 05/26/2004

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 35

Application Number: 09/195,005

Filing Date: November 18, 1998

Appellant(s): WILLING, BERND

Mr. Gary Matz
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 3, 2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The brief states that claims 7, 11 and 12 stand or fall together.

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

No prior art is relied upon by the examiner in the rejection of the claims under appeal.

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 7, 11 and 12 are rejected under 35 U.S.C. 112 for the following reasons.

The claims 7, 8 and 10-12 are rejected under first paragraph, as indicated in the September 25, 2002 decision pages 5 and 6 by the Board of Appeals. The claims require "carrier cages" in lines 7 and 8 of claim 7 and "coupling elements" in line 14 of claim 7 which the Board considered to inadequately disclosed as stated on page 5 of the decision. The use of "first guide roller" in place of "detachable connection element" and "second guide roller" in place of "connecting element" that the Board of Appeals had determined in its September 25, 2002 decision were inadequately disclosed is not considered to overcome these problems. The problems discussed in the last five lines of page 5 of the decision have not been overcome.

All claims are further rejected under first paragraph of 35 U.S.C. 112 because the friction drive will push the wagon on the insertion track into the gap between adjacent wagons on the chain in the loop at the corner of the oval. Those chain-mounted wagons will crush the entering wagon as they move to the straight portion of the loop because no real void exists between them. There is no disclosure of any control system to only run the insertion drive at the appropriate time when a void approaches on the loop. Therefore the friction drive must run continuously and cause the previously mentioned feed problem.

All claims are further rejected under first paragraph of 35 U.S.C. 112 because there is no disclosure for a control system to operate the switches 27 at the correct time

to divert the correct wagon and the correct roller 8 of said wagon to avoid wagon removal errors.

(11) Response to Argument

With regard to the remarks on pages 3-9 of the brief, the following should be noted. Concerning the issues involving "first guide roller" in place of "detachable connection element" and "second guide roller" in place of "connecting element", lines 8-14 of page 5 of the Board Decision of September 25, 2002 state:

"The following elements are recited in the claims but their structure, operation, and manner of interaction with one another are not described in the specification:

- (1) The "detachable connection element" in line 4 of claim 1.
- (2) The "coupling element" in line 8 of claim 1.
- (3) The "connecting element" in line 9 of claim 1.
- (4) The "detachable element" in line 13 of claim 1.
- (5) The "carrier cage" in line 2 of claim 6."

The rhetoric on pages 4 and 5 of the brief fails to reveal any new structural details of how the claimed elements can cooperate without the catastrophes (1. chain-mounted wagons will crush the entering wagon as they move to the straight portion of the loop because no real void exists between them or 2. divert the correct wagon and the correct roller 8 of said wagon to avoid wagon removal errors) occurring as mentioned by the examiner. On page 6 third paragraph of the brief, appellant alleges that the claimed elements are given broad names "that are readily recognizable and understandable to those in the art". Appellant then alleges that the foreign language references filed

January 9, 2004, which have not been properly filed under 37 C.F.R. 1.97 and 1.98 and therefore not considered by the examiner, can be used somehow in the claimed invention. Appellant is reminded that the name changes permitted by the examiner "first guide roller" in place of "detachable connection element" and "second guide roller" in place of "connecting element" do not include permission to change the original disclosure. The "first guide roller" is still the "detachable connection element" and "second guide roller" is still the "connecting element". Pointing to references that allegedly show rollers but fail to show the design of a "detachable connection element" and a "connecting element" does not overcome the disclosure problem.

On page 7 of the brief, appellant discusses the desired operation of the insertion of a wagon into a large void between wagons on the oval track. Unfortunately, appellant has failed to address what prevents the high speed, insertion guide track friction drive from forcing a wagon into the temporary divergent space (see figures 1 and 2) between adjacent wagons on the oval track and the subsequent "wagon crushing" caused by the closing of the temporary divergent space as the wagons move from the curved portion of the oval track to the straight portion of the track.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



JOSEPH E. VALENZA
PRIMARY EXAMINER

JEV
May 18, 2004

Conferees

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